IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 1242 OF 2006

Mrs. Reshma Rafiq Desai ...Petitioner
Age. 45 years, Occ. Government
Service, residing at B-48/1,
Government Colony, Mumbai 400 051
Holding the post of President of
Maharashtra Nursing Council

V/s.

1. The State of Maharashtra ...Respondents
   Through the Principal Secretary,
   Medical Education & Drugs Deptt.
   Mantralaya, Mumbai - 400 032.

2. Maharashtra Nursing Council
   A Statutory Authority established
   under The Maharashtra Nurses Act,
   1966, Through its Registrar,
   having office at ESIS Hospital
   compound, Nurses Hostel, Second
   Floor, LBS Marg, Mulund (West),
   Mumbai - 400 080.

Mr. Uday P. Warunjikar for the petitioner.
Ms. I. Calcuttawala, AGP for respondent No. 1.
Mr. D.N. Salvi & Mr. S.M. Kelkar for respondent No. 2.

CORAM : F.I. REBELLO &
SMT.V.K. TAHILRAMANI, JJ.
DATED : 9th October, 2006

ORAL JUDGMENT [PER F.I. REBELLO, J] :

. Rule. Heard forthwith.

2. A few facts need to be set out for the purpose of considering the issue which arises in this

petition:

. The petitioner was elected as the President of the Maharashtra Nursing Council pursuant to the notification issued in the month of April, 2003. A president is elected by the members from amongst themselves. The term of an elected member is four years. It appears that the petitioner has lost confidence of overwhelming majority of the elected members of the Maharashtra Nursing Council, Mumbai. The Council consists of both elected and non-elected members. At a meeting of the general body held on 13.04.2006 at which meeting and as per the minutes recorded, but disputed by the petitioner considering her endorsement on the said minutes, that she had agreed to resign from the post of the President. An extra-ordinary meeting thereafter came to be called on 10.05.2006 as the petitioner had not resigned wherein members of the council passed a motion of no confidence against the petitioner and also expelled the petitioner from office. The Maharashtra Nursing Council is set up under the provisions of the Maharashtra Nurses Act, 1966 and rules framed thereunder, which hereinafter shall be referred to as the "Act". By virtue of Section 3(2) of the Act, the

Council is a body corporate, having perpetual succession and a common seal. Section 3(4) of the Act provides that the President shall be elected by the members from amongst themselves. Section 3(5) sets out that the election of members and of the President, office president shall be held at such time and such place and in such manner as may be prescribed. We may gainfully reproduce the Provisions of Section 4:-

> 4. (1) The State Government shall, by notification in the Official Gazette, publish the names of the members, both elected and nominated.
>
> (2) Save as otherwise provided in this Act, a member, other than an ex-officio member, shall hold office for a term of five years from the date of publication of the notification under sub-section (1):
>
> . Provided that, where a person is elected under paragraph (v) of clause (b) of sub-section (3) of section 3, he shall cease to hold office as a member if he ceases to be a registered medical practitioner.
>
> (3) Save as otherwise provided by this Act, the President and the Vice President shall hold office from the date of his election up to the date on which his term of office as a member expires.
>
> (4) The term of office of the outgoing members shall, notwithstanding anything contained in sub-section (2), be deemed to extend to and expire with the day immediately proceeding the day on which the names of the/successor members are published under sub-section (1).

> (5) The term of office of an outgoing President or Vice-President shall, notwithstanding anything contained in sub-sections (2) and (3), be deemed to extend to and expire with the day immediately preceding the day on which the successor President or Vice-President, as the case may be, is elected.
>
> (6) .....
>
> (7) .....

. Similarly, Section 5(1) would be relevant and it reads as under: -

> 5.(1) Any casual vacancy, previous to the expiry of the term, in the office of the President or Vice-President or of a member elected under clause (b) of sub-section (3) of section 3, caused by reason of death, resignation, disqualification or disability or any other reason, shall be filled by election:
>
> . Provided that, any such vacancy in the office of an elected member occuring within six months prior to the date on which the term of office of all the members expires, shall not be filled.

3. On behalf of the petitioner, the learned Counsel submits that on reading of Section 4, it would be clear that once a member is elected as the President, he continues to hold office from the date of his election up to the date on which his term of office as a member expires. There is no provision of

holding a motion of no confidence against the President. Any casual vacancy can only arise by reason of death, resignation, disqualification or disability or any other reasons. It is, therefore, submitted that the expression "any other reason" has to be read ejusdem generis with the other terms and would mean any other reason, which reason would be that the President is unable to discharge his functions. If the Act wanted that the term of the President could be reduced it ought to have, conferred power on the council to provide for motion of no confidence, expressly. It has not so provided. The only assumption that follows would mean that once a President is elected, unless the President resigns or is disqualified or suffers any disability that prevents him from discharging his duties as President and as set out in Section 5(1) of the Act, the elected President continues for the entire term of the council. In support of this contention, the learned counsel has relied on a judgment of a learned Division Bench of this Court in **Hindurao Balwant Patil and anr. V/s. Krishnarao Parshuram Patil and ors., AIR 1982 BOMBAY 216.** This judgment was delivered under the provisions of Maharashtra Co-operative Societies Act, 1960. There also, there was no provision for motion

of no confidence. Reliance is then placed on a judgment of a Full bench of Punjab and Haryana High Court in the case of **Jagdev Singh V/s. The Registrar, Co-operative Societies, Haryana and ors., AIR 1991 PUNJAB & HARYANA 149.** That case is also under the provisions of Punjah Co-operative Societies Act. Neither Rules nor Bye-laws provided for the motion of no confidence. The learned Full bench relied on the judgment of this Court in Hindurao V/s. Krishnarao, and the the judgment of the Andhra Pradesh High Court in **Veeramachaneni Venkata Narayana V/s. District Dy. Collector, ILR (1975) Andh Pra 242.**

. Reply has been filed by the Registrar of respondent No. 2. It may be mentioned that before us an affidavit has been filed by 19 members of the Council, that they have no confidence in the petitioner and have passed a no confidence motion against her and also expelled her from the position of the president after discussion at general body meeting and extra-ordinary general body meeting held on 13.04.2006 and 10.05.2006. The Registrar in the affidavit at paragraph 7 admits, that there is no specific provision for removal of president by passing a no confidence resolution, but however, the power

flows from the power given to the Council to appoint/choose the President from amongst themselves by majority. It is pointed out that Nursing Council consists of 30 members. Out of which six members are ex-officio. Two posts of ex-officio are vacant and presently the council is having a strength of only 28 members. The various allegations against the petitioner in the matter of illegalities, abuse and exercise of power are set out. We are not really concerned with the same. Reference is also made to Section 40 of the Act to contend that the source of power lies there. Under that section, the petitioner can be removed by the Government. It is not necessary to refer to the other affidavits. On behalf of the State of Maharashtra, an affidavit has been filed by Mr. Vilas Kisan Alhal, the Deputy Secretary, Medical Education Department. It is pointed out that the Council by letter dated 12.05.2006 forwarded the minutes of the Extra-Ordinary General Body Meeting held on 10.05.2006. The respondent No. 1 by letter dated 25th May, 2006 addressed to Registrar has called for an explanation. By another letter of the same date, attention of the Registrar was invited to the fact that neither the Act nor Rules contain any provision for removal of the President of the Council

or by a resolution by way of no-confidence motion can be passed against the President of the Council. Explanation has been sought from the Registrar.

. The petitioner has filed rejoinder denying various allegations and adverted to some subsequent events and additional facts. It is not necessary for us to go into those aspects, considering the question we are called upon to decide.

4. The question before us, is, whether there is power in the Council to table a motion of no confidence against the President. On behalf of respondents, our attention was invited to some judgments to point out, what should be the process of interpretation while construing statute. We may refer to those judgments. In **Bhavnagar University V/s. Palitana Sugar Mills (P) Ltd. (2003) 2 Supreme Court Cases 111**, the Supreme Court has observed that, it is the basic principle of construction of statutes, that the same should be read as a whole, then chapter by chapter, section by section and words by words. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort

must be made to give effect to all parts of the statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant. The Court has further observed that the true meaning of provisions of law has to be determined on the basis of what is provided by its clear language, with due regard to the scheme of law. Observing further, the Court stated that scope of the legislation or the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconciable with the rest of the statute. In Godawat Pan Masala Products I.P. Ltd and Anr. V/s. Union of India and Ors. (2004) 7 Supreme Court Cases 68, the Apex Court further observed that it is an accepted canon of construction of statues that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions of the same Act so as to make a consistent, harmonious enactment of the whole statute. The Court must

ascertain the intention of legislature by directing its attention not merely to the clauses to be construed, but to the scheme of the entire statute. The attempt must be to eliminate conflict and to harmonise the different parts of the statute for it cannot be assumed that Parliament had given by one hand what it took away by the other.

. Let us apply those principles. In the instant case the language of Section 4(3) of the Act is clear, the President holds office from the date of his election up to the date, his term of office as a member expires. Section 5(1) speaks of casual vacancy in the office of the President. It does not provide for a motion of no confidence, nor have any rules been framed in the matter of no confidence. As we have noted earlier, apart from what is set out in Section 5(1), a casual vacancy can arise also for any other reason. A reading of Section 5(1) would show that this could be on account of death, on account of disqualification which a person may incur and as set out in Section 7 of the Act. Other circumstances are a voluntary act on the part of a president resigning or incurring disability which prevents him from functioning as a president. Before this Court in

Hindurao Balwant Patil and anr (Supra), a similar issue arose for consideration in a case where the Act as it then stood did not provide for a motion of no confidence. It was argued before the learned Division Bench, that as the members of the board had been conferred power to elect Chairman and Vice Chairman, they have also an implied and inherent power to remove them by passing a resolution of vote of no confidence, because in the very nature of things if these office bearers are to function properly, they must enjoy the confidence of the members of the board. The learned Bench of this Court rejected that contention by holding that the board itself is a creature of a statute. Election held to the board and the right conferred upon the member to elect office bearers is also a creature of the same statute. The Act, Rules and By-laws did not confer any right upon the members of the board of directors to remove the Chairman by passing mere vote of no confidence. In these circumstances, it would not be proper to confer such wide power upon the Board of Directors by taking recourse to the doctrine of implied power. The issue decided by learned Division Bench in Hindurao also came up for consideration before the Full Bench of Punjab and Haryana High court in Jagdev Singh (Supra).

The learned bench construing provisions, which are similar provisions like the Maharashtra Co-operative Societies Act, placed reliance on the Judgment of Division Bench in Hindurao Balwant Patil (Supra) and held that in absence of any specific provision, it cannot be inferred that the Act conferred and implied inherent right for removal of an authority. The learned Bench observed that these are not common law rights but rights created by a statute. Gainful reference was made to Maxwell's Interpretation of Statutes, 12th Edition.

> "It is corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express, Lord Mersey said 'It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do' (Thompson v. Goold & Co (1910 AC 409). 'We are not entitled said Lord Loreburn L.C., to 'read words

> into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself (Vickers, Sons, & Maxim, Ltd. v. Evans (1910 AC 444)".

. It would thus be clear that in absence of any express provision, it would not be possible to construe that there is inherent power in the council to pass a motion of no confidence. Once a President is elected, unless a vacancy arises in terms of Section 5(1), the President is entitled to hold office for the entire period of the term. The expression 'other reason' perhaps could have been considered if there was anything implied to indicate that it confers power on the council to remove the President by passing a motion of no confidence. Even if, so considered, there are no rules providing for the manner in which motion of confidence could be moved or taken up. This will also indicate that the expression 'other reason' could not be by motion of no confidence.

5. Before we conclude, we may refer to Section 40(1) of the Act. It reads as under :-

40. (1) If at any time it appears to the State Government that the Council or its President or Vice-President has failed to exercise, or has exceeded or abused any of the powers conferred upon it or him by or under this Act, or has ceased to function, or has become incapable of functioning, the State Government may, if it considers such failure, excess, abuse or incapacity to be of a serious character, notify the particulars thereof to the Council or the President or the Vice-President, as the case may be. If the Council or the President or the Vice-President fails to remedy such failure, excess, abuse or incapacity within such reasonable time as the State Government may fix in this behalf, the State Government may remove the President or the Vice President or dissolve the Council, as the case may be, and in case of dissolution of the Council to be cause all or any of the powers, duties and functions of the Council to be exercised,

performed and discharged by such persons and for such period not exceeding two years, as it may think fit, and shall take steps to constitute, a new Council.

(2) .....

. It will thus be clear that it is not as if there is a total vaccum. The legislature has conferred a power on the State Government in the event the President fails to exercise or exceeds or abuses any of the powers conferred under the Act or ceases to function or become incapable of functioning, if it considers such failure, excess, abuse or incapacity is of a serious character, notify the particulars to the President and if the President fails to remedy the same within reasonable time as the State Government may fix, it is open to the Government to remove the President. The vacancy which will arise would be a casual vacancy in terms of Section 5(1) of the Act and the expression any other reason can include a casual vacancy arising from the removal of the president under Section 40 (1) of the Act. Applying the interpretative process, and reading the Act, as a whole, it would be clear that a remedy is provided in

a case where the President loses the confidence of the majority of the members. The functioning of the president is dependent on such person enjoying the confidence of other members of the Council. If the president loses that confidence in terms of Section 40(1), it will amount to incapacity to discharge his function and such incapacity would necessarily be of a serious character, unless on the procedure being followed under Section 40(1), the President is in a position to establish that even though he has lost his majority, he can still carry on effectively the functions as a president and does not require the support of the majority of the Council for carrying on his function. In our opinion, such a situation really cannot arise in a case where resolutions have to be passed by a majority. Every resolution proposed by the president even if it be meritorious, if it does not receive the support of the other members of the Council because of their lack of confidence in the President, the function of the Council as a statutory body will be affected. The Act, therefore, has provided remedy in such case. It will be open to those members who are aggrieved by the continuance of the president, who in their eyes has lost their confidence to function as President to move the State

Government as we have noted in earlier part of a judgment. There are presently 28 members of the Council. There are two vacancies of ex-officio members. Out of 28, 19 members have filed affidavit expressing their no confidence in the petitioner. If the members of the Council address a representation to respondent No. 1, the respondent No. 1 to commence the procedure under Section 40(1) within four weeks of receiving of the representation and thereafter to take final steps if required under Section 40(1), not later than eight weeks from the date of calling on the petitioner to give his say and to remedy the failure, excess, abuse or incapacity.

6. For the aforesaid reasons, we hold that the resolution of no confidence passed against the petitioner was without the authority of law and consequently, illegal, null and void. The petition must therefore succeed and in the circumstances Rule is made absolute in terms of prayer clause (b) and consequently all decisions taken pursuant to resolution No. 2 dated 10.05.2006 are held null and void, subject to what we have stated in the petition. In the circumstances of the case, there shall be no order as to costs.

[F.I. REBELLO, J.]

[SMT. V.K. TAHILRAMANI, J.]